

January 14, 2013

Ms. Charlotte Horn
Texas Commission on Environmental Quality
Office of Legal Services
MC-205
P.O. Box 13087
Austin, Texas 78711-3087

RE: Rule Project No. 2009-009-101-AI
Comments on Proposed Rule, Severe Ozone Nonattainment Area Failure to Attain Fee

Dear Ms. Horn:

LyondellBasell appreciates the opportunity to provide comments on the proposed rule by the Texas Commission on Environmental Quality (TCEQ), Severe Ozone Nonattainment Area Failure to Attain Fee as published in the Texas Register 37 Tex. Reg. 9468 (Nov. 30, 2012).

LyondellBasell is a global leader in polyolefins technology, production and marketing; a pioneer in propylene oxide and derivatives production; and a significant producer of olefins, fuels and refined products. Our products are building blocks for countless goods and products that people use every day, such as food packaging, household furnishings, detergents, cosmetics, automotive parts, construction and home-building materials, paints and coatings and numerous other applications. Lyondell Chemical operates manufacturing facilities in Texas, several other States, and worldwide.

In general, LyondellBasell supports the development of a fee program as required per Section 185 of the Clean Air Act (CAA). LyondellBasell also supports providing as much flexibility as possible in the rule by providing options for alternative and equivalent fee programs. Specifically, LyondellBasell would like to highlight the following issues in the proposed rulemaking:

- We support the language in §101.106(b) allowing the flexibility of a baseline emissions year to be the attainment year or any single 24-month consecutive period within the historical 10 year period for non-electric utilities. This multi-year baseline concept is consistent with the statutory language of Section 185(b)(2), which provides that the “the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of the average actuals or average allowables determined over a period of more than one calendar year.” Additionally, EPA has issued guidance establishing the multi-year baseline concept as an acceptable method for determining the Section 185 fee baseline.
- We support the language in §101.107 to allow an aggregated baseline amount for multiple major stationary sources and/or for NO_x and VOC emissions. TCEQ has also proposed that an aggregated baseline amount must be based on the same time period and the same basis of either actual or authorized emissions for each source and pollutant. We request that TCEQ consider providing an option for major stationary sources to have different baseline periods for different pollutants as is currently found in other NSR rules.

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- Under §101.110 the proposed rules should allow an exclusion for new emissions units. Such an exclusion implements the key principle that Section 185 obligations should be applied equitably to “catch up” less well controlled sources. New units installed after the attainment date will already be well-controlled based on the application of new source review technology and impacts analysis.
- We strongly support the proposal in §101.118(b) to provide the ability of the Executive Director to place the fee collection in abeyance in the event that an attainment demonstration with the 1-hour ozone standard is submitted to EPA for approval.
- Proposed §101.101 states that the provisions of this subchapter apply to “major stationary sources” of VOC or NOx located in the HGB one-hour non-attainment area. The definition of “major stationary source” references section §116.12 of the existing TCEQ rules. In that section the definition mentions, “The fugitive emissions of a stationary source shall not be included in the determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 CFR 51.165(a)(1)(iv)(C).”

40 CFR 51.165(a)(1)(iv)(C)(22) lists “Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels” as a source category. LyondellBasell currently operates an underground hydrocarbon storage facility (containing refined products and non-crude oil feedstocks) with a total storage capacity exceeding 300,000 barrels in the HGB non-attainment area. LyondellBasell’s storage facility does not meet the definition of “Petroleum storage and transfer units” and therefore the fugitive emissions are not included in determining its major source applicability. LyondellBasell has successfully defended this position during multiple TCEQ NSR air permitting activities for the storage facility. As such, the LyondellBasell storage facility does not meet the definition of a “major stationary source” and therefore the proposed TCEQ Section 185 fee rule should not apply to the facility.

LyondellBasell requests some clarity as to whether facilities such as the storage facility described above will be part of TCEQ’s Section 185 database and covered by the fee program or if there is an ability within the proposed rule to demonstrate to TCEQ why a facility should not be part of the fee rule.

- TCEQ staff have flagged to EPA the high 1-hour ozone readings at the Houston East air quality monitor on August 26 and 29, 2011 as potentially influenced by exceptional events. TCEQ should continue to flag days that are potentially affected by exceptional events, such as wildfires, and also submit technical data to EPA to support the flagged days in order to determine if the Section 185 Fees program can be suspended.
- The federal Clean Air Act provides that an area is exempt from Section 185 fees if it would have attained the ozone standard by the applicable attainment date but for international emissions (CAA Section 179B(b)). Substantial scientific data and new studies suggest that there could be significant contributions of ozone and its’ precursors into the United States (U.S.) from Asia as well as smoke from Canada and Mexico contributing to ozone entering the HGB area. TCEQ should conduct a boundary condition analysis as soon as possible. The results of this analysis, and other related analysis, should be used to determine whether the HGB area would have attained the 1-hour ozone standard by the attainment date but for emissions emanating from outside the U.S. If the analysis

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demonstrates this, TCEQ should pursue all appropriate means (i.e. clean data petition, 179(b) petition, SIP revision) to have the HGB region declared in attainment of the 1-hour ozone standard.

LyondellBasell appreciates the opportunity to provide comments on this proposed rulemaking. If you should have any questions or need further information, please contact me at 713-209-7013.

Sincerely,

Rohit Sharma

Rohit Sharma
Environmental Issues Manager